

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 ANDERSON/GREENWOOD DIVISION

Mitchell Sumpter,)	Case No. 8:14-cv-00106-JFA-JDA
<i>a/k/a Mitchell Lee Truman Sumpter,</i>)	
<i>a/k/a Mitchell L. Sumpter,</i>)	
<i>a/k/a Mitchell Lee Sumpter,</i>)	
)	
Plaintiff,)	
)	
v.)	<u>REPORT AND RECOMMENDATION</u>
)	<u>OF MAGISTRATE JUDGE</u>
A. Lane Crabb, Sheriff of Georgetown)	
County; Michael A. Schwartz,)	
Administrator; Head Nurse Connie; Nurse)	
Doran; Dr. Reeves; Capt. Wineglass,)	
<i>all in their individual and official capacities,</i>)	
)	
Defendants.)	
)	

This matter is before the Court on a motion for summary judgment filed by Head Nurse Connie, Nurse Doran, and Dr. Reeves (“the Medical Defendants”). [Doc. 58.] Plaintiff is a pretrial detainee at Georgetown County Detention Center (“GCC”).¹ [Doc. 1.] Plaintiff is proceeding pro se and brings this civil rights action pursuant to 42 U.S.C. § 1983. [*Id.*] Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d), D.S.C., this magistrate judge is authorized to review all pretrial matters in cases filed under § 1983 and to submit findings and recommendations to the District Court.

¹Plaintiff informed the Court of a change of address on May 7, 2014, when he was moved to the J. Reuben Long Detention Center. [Doc. 45.] The Court was informed on June 30, 2014, that he had been moved back to GCDC. [Doc. 57.]

Plaintiff filed this action on January 7, 2014.² [Doc. 1.] On June 30, 2014, the Medical Defendants filed a motion for summary judgment. [Doc. 58.] On the same day, the Court filed an Order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment procedure and of the possible consequences if he failed to adequately respond to the motion. [Doc. 59.] Plaintiff filed a response in opposition on September 2, 2014, and the Medical Defendants filed a reply on September 12, 2014. [Docs. 92, 98.] Accordingly, the Medical Defendants' motion is now ripe for review.

BACKGROUND³

Plaintiff alleges that on November 28, 2013, he was beaten and robbed by several men. [Doc. 1-12 at 4.] He claims he awoke in the Myrtle Beach Grand Strand Hospital where he complained of intense pain throughout his body. [*Id.*] Plaintiff maintains he was prescribed medication for pain. [*Id.* at 5.] From there, he was taken to the Myrtle Beach Police Department. [*Id.*] On November 29, 2013, Plaintiff was transferred to GCDC. [*Id.*] Plaintiff asserts an officer informed the staff at GCDC the Plaintiff needed two mattresses and the pain medication prescribed to him. [*Id.*] He alleges the staff told him he would need to see a nurse before any medication could be given to him. [*Id.*] Plaintiff claims he did not see a nurse until after dinner when she told him she could not give him any medications and that he should sign up for sick call. [*Id.* at 6.] He claims it was two weeks

²A prisoner's pleading is considered filed at the moment it is delivered to prison authorities for forwarding to the court. See *Houston v. Lack*, 487 U.S. 266, 270 (1988). In this case, construing the filing date in the light most favorable to Plaintiff, this action was filed on January 7, 2014. [Doc. 1 (complaint signed January 7, 2014).]

³The background addresses only the allegations regarding allegedly insufficient medical treatment provided by the Medical Defendants.

before he was permitted to see a doctor. [*Id.*] At that appointment, Plaintiff asserts he was given Tylenol and Ibuprofen which shut down his kidneys. [*Id.*]

Plaintiff alleges that Nurse Connie would interrupt him when he spoke to the doctors and would cut exams short. [*Id.*] Additionally, he contends he has broken fingers that have not been treated, he is in constant pain from his injuries, and he is being denied his psychological medications. [*Id.* at 7.]

Plaintiff claims he has been subjected to cruel and usual punishment, deliberate indifference to serious medical needs, and negligence by the Medical Defendants. [*Id.*] Plaintiff requests proper medical treatment; \$3,000,000 in actual damages; \$1,000,000 for pain and suffering; \$1,000,000 for mental anguish; and any other remedies the Court sees fit to grant. [*Id.* at 8.]

APPLICABLE LAW

Liberal Construction of Pro Se Complaint

Plaintiff brought this action pro se, which requires the Court to liberally construe his pleadings. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); *Loe v. Armistead*, 582 F.2d 1291, 1295 (4th Cir. 1978); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). Pro se pleadings are held to a less stringent standard than those drafted by attorneys. *Haines*, 404 U.S. at 520. Even under this less stringent standard, however, a pro se complaint is still subject to summary dismissal. *Id.* at 520–21. The mandated liberal construction means that only if the court can reasonably read the pleadings to state a valid claim on which the complainant could prevail, it should do so. *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999). A court

may not construct the complainant's legal arguments for him. *Small v. Endicott*, 998 F.2d 411, 417–18 (7th Cir. 1993). Nor should a court "conjure up questions never squarely presented." *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

Requirements for a Cause of Action Under § 1983

This action is filed pursuant to 42 U.S.C. § 1983, which provides a private cause of action for constitutional violations by persons acting under color of state law. Section 1983 "is not itself a source of substantive rights," but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). Accordingly, a civil action under § 1983 allows "a party who has been deprived of a federal right under the color of state law to seek relief." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999).

Section 1983 provides, in relevant part,

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

42 U.S.C. § 1983. To establish a claim under § 1983, a plaintiff must prove two elements: (1) that the defendant "deprived [the plaintiff] of a right secured by the Constitution and laws of the United States" and (2) that the defendant "deprived [the plaintiff] of this constitutional right under color of [State] statute, ordinance, regulation, custom, or usage." *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001) (third alteration in original) (citation and internal quotation marks omitted).

The under-color-of-state-law element, which is equivalent to the “state action” requirement under the Fourteenth Amendment,

reflects judicial recognition of the fact that most rights secured by the Constitution are protected only against infringement by governments. This fundamental limitation on the scope of constitutional guarantees preserves an area of individual freedom by limiting the reach of federal law and avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed.

Id. (quoting *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998)) (internal citations and quotation marks omitted). Nevertheless, “the deed of an ostensibly private organization or individual” may at times be treated “as if a State has caused it to be performed.” *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001). Specifically, “state action may be found if, though only if, there is such a ‘close nexus between the State and the challenged action’ that seemingly private behavior ‘may be fairly treated as that of the State itself.’” *Id.* (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974)). State action requires both an alleged constitutional deprivation “caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State . . . or by a person for whom the State is responsible” and that “the party charged with the deprivation [is] a person who may fairly be said to be a state actor.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). A determination of whether a private party’s allegedly unconstitutional conduct is fairly attributable to the State requires the court to “begin[] by identifying ‘the specific conduct of which the plaintiff complains.’” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)).

Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure states, as to a party who has moved for summary judgment:

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). A fact is “material” if proof of its existence or non-existence would affect disposition of the case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is “genuine” if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant’s position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. *Ross v. Commc’ns Satellite Corp.*, 759 F.2d 355,

365 (4th Cir.1985), *overruled on other grounds*, 490 U.S. 228 (1989). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson*, 477 U.S. at 248. Further, Rule 56 provides in pertinent part:

A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

- (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1). Accordingly, when Rule 56(c) has shifted the burden of proof to the non-movant, he must produce existence of a factual dispute on every element essential to his action that he bears the burden of adducing at a trial on the merits.

DISCUSSION

The Medical Defendants argue Plaintiff cannot establish his deliberate indifference claim because he cannot establish that his medical needs were sufficiently serious or that his treatment rose to the level of deliberate indifference. [Doc. 58-4.] The Court agrees the Medical Defendants are entitled to summary judgment. Because at all relevant times Plaintiff was a pretrial detainee, his claims are evaluated under the Fourteenth Amendment rather than the Eighth Amendment, which is used to evaluate conditions of confinement

for those convicted of crimes. See *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). Unlike convicted inmates, pretrial detainees have not been adjudicated guilty of a crime and may not be subjected to any form of “punishment.” *Martin v. Gentile*, 849 F.2d 863, 870 (4th Cir. 1988). To establish that a condition or restriction of confinement is constitutionally impermissible “punishment,” a pretrial detainee must show “either that it was (1) imposed with an expressed intent to punish or (2) not reasonably related to a legitimate nonpunitive governmental objective, in which case an intent to punish may be inferred.” *Id.* (citing *Bell v. Wolfish*, 441 U.S. 520, 538–40 (1979)). Courts may infer that a restriction or condition is not reasonably related to a legitimate governmental objective, and is therefore punishment, if the restriction is arbitrary or purposeless. *Bell*, 441 U.S. at 539. However, while the purpose of pretrial confinement is to ensure the detainee’s presence at trial, the detention center may impose restraints on the detainee that are reasonably related to the detention center’s interest in maintaining the facility’s security, even if the restraints “are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial.” *Id.* at 539–40.

In any event, “[t]he due process rights of a pretrial detainee are at least as great as the [E]ighth [A]mendment protections available to the convicted prisoner.” *Martin*, 849 F.2d at 870. Deliberate indifference to a prisoner’s serious medical needs violates the Eighth Amendment and states a cause of action under § 1983 because deliberate indifference constitutes “the ‘unnecessary and wanton infliction of pain.’” *Estelle*, 429 U.S. at 104–05 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.)). Deliberate indifference exists when prison officials know of a substantial

risk to a prisoner's health or safety and consciously disregard that risk. See *Farmer v. Brennan*, 511 U.S. 825, 836 (1994); *Miltier v. Beorn*, 896 F.2d 848, 851–52 (4th Cir. 1990) (“Deliberate indifference may be demonstrated by either actual intent or reckless disregard. A defendant acts recklessly by disregarding a substantial risk of danger that is either known to the defendant or which would be apparent to a reasonable person in the defendant's position.” (citation omitted)). Within the United States Court of Appeals for the Fourth Circuit, “the treatment must be so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness” to violate a prisoner's Eighth Amendment rights. *Miltier*, 896 F.2d at 851.

To prevail on an Eighth Amendment claim, the prisoner must demonstrate (1) his medical condition was a sufficiently serious one⁴ and (2) subjectively, the prison officials acted with a sufficiently culpable state of mind, which is satisfied by showing deliberate indifference by the prison officials. *Goodman v. Wexford Health Sources, Inc.*, No. 09-6996, 2011 WL 1594915, at *1 (4th Cir. Apr. 28, 2011) (quoting *Johnson v. Quinones*, 145 F.3d 164, 167 (4th Cir. 1998)). As the United States Supreme Court has explained,

Since, we said, only the “unnecessary and wanton infliction of pain” implicates the Eighth Amendment, a prisoner advancing such a claim must, at a minimum, allege “deliberate indifference” to his “serious” medical needs. “It is *only* such indifference” that can violate the Eighth Amendment; allegations of “inadvertent failure to provide adequate medical care,” or of a “negligent . . . diagnos[is],” simply fail to establish the requisite culpable state of mind.

⁴“A medical need is ‘serious’ if it is one that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.” *Gaudreault v. Municipality of Salem, Mass.*, 923 F.2d 203, 208 (1st Cir. 1990) (citing *Monmouth Cnty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3rd Cir. 1987); *Hendrix v. Faulkner*, 525 F. Supp. 435, 454 (N.D. Ind. 1981)).

Wilson v. Seiter, 501 U.S. 294, 297 (1991) (emphasis and alteration in original) (citations omitted). Further, in the context of prisoner medical care, the Constitution requires only that prisoners receive adequate medical care; a prisoner is not guaranteed his choice of treatment. *Jackson v. Fair*, 846 F.2d 811, 817 (1st Cir. 1988) (citing *Layne v. Vinzant*, 657 F.2d 468, 471 (1st Cir. 1981)); see *Russell v. Sheffer*, 528 F.2d 318, 318 (4th Cir. 1975) (citing *Blanks v. Cunningham*, 409 F.2d 220 (4th Cir. 1969); *Hirons v. Director*, 351 F.2d 613 (4th Cir. 1965)) (“Prisoners are entitled to reasonable medical care.”); see also, e.g., *Barton v. Dorriety*, No. 9:10-cv-1362, 2011 WL 1049510, at *2 (D.S.C. Mar. 21, 2011) (citing *Jackson*, 846 F.2d at 817). The fact that a prisoner believed he had a more serious injury or that he required better treatment does not establish a constitutional violation. See, e.g., *Russell*, 528 F.2d at 319.

In this case, assuming without deciding that Plaintiff can establish his medical needs were sufficiently serious, he has failed to establish a genuine issue of material fact remains as to whether Defendants acted with a sufficiently culpable state of mind. Plaintiff has failed to show that the Medical Defendants knew of and ignored Plaintiff’s need for medical care or that Plaintiff received inadequate medical care. Evidence from Plaintiff and the Medical Defendants establishes that the Medical Defendants responded to Plaintiff’s requests for medical treatment. [Docs. 58-2, 92-2.] Among other treatments, the medical staff x-rayed Plaintiff’s hand, prescribed hydrocodone for pain, and tested his kidneys. [*Id.* at 13, 15, 20.] Plaintiff does not contest that he received medical care, and his medical

records indicate he has been seen several times since his arrival at GCDC.⁵ [Docs. 92-2 at 3– 4, 58-2.] The fact that Plaintiff does not agree with the type of treatment provided does not create a cause of action under § 1983. See, e.g., *Russell*, 528 F.2d at 319.

CONCLUSION

Wherefore, based upon the foregoing, the Court recommends that the Medical Defendants' motion for summary judgment be GRANTED.

IT IS SO RECOMMENDED.

S/Jacquelyn D. Austin

United States Magistrate Judge

September 15, 2014
Greenville, South Carolina

⁵To the extent Plaintiff alleges negligence or medical malpractice, negligent or incorrect medical treatment is not actionable under 42 U.S.C. § 1983. *Estelle*, 429 U.S. at 106. Similarly, medical malpractice is not actionable under 42 U.S.C. § 1983. *Id.* (“Medical malpractice does not become a constitutional violation merely because the victim is a prisoner.”). Moreover, to the extent Plaintiff is attempting to set forth a state law claim for medical malpractice, Plaintiff has failed to proffer expert testimony that the Medical Defendants deviated from the standard of care. See S.C. Code Ann. § 15–36–100.